



HAWAI'I STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i 96813

Committee: Committee on Labor
Bill Number: H.B. 2747
Hearing Date/Time: February 4, 2020, 9:30 a.m.
Re: Testimony of the Hawai'i State Ethics Commission with **COMMENTS**
on H.B. 2747, Proposing an Amendment to Article XVI, Section 2 of the
Constitution of the State of Hawaii

Dear Chair Johanson, Vice Chair Eli, and Committee Members:

The Hawai'i State Ethics Commission ("Commission") has not had an opportunity to discuss H.B. 2747, such that it does not take a position on the proposed constitutional amendment at this time. However, the undersigned submits the following comments for the Committee's consideration.

The Commission has, at times, discussed the possible need for increased penalties – including pension forfeiture – for employment-related misconduct. Although employment-related felonies for State employees are quite rare, an increased penalty may serve as an additional deterrent that will help promote the public's trust in government officials. Furthermore, I believe the Commission would support the requirement that pension forfeiture occur only after a court concludes that an employee committed a felony, and not upon a lower standard.

Thank you for your continuing support of the Commission's work and for considering this testimony on H.B. 2747.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

Statement Before The
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Tuesday, February 4, 2020
9:30 AM

State Capitol, Conference Room 309

in consideration of

HB 2747

PROPOSING AN AMENDMENT TO ARTICLE XVI, SECTION 2, OF THE HAWAII STATE CONSTITUTION, TO AUTHORIZE THE LEGISLATURE TO REQUIRE THE FORFEITURE OR REDUCTION OF PENSION BENEFITS OF A MEMBER, FORMER MEMBER, OR RETIRANT OF THE EMPLOYEES' RETIREMENT SYSTEM WHO IS CONVICTED OF A FELONY RELATED TO THE MEMBER'S, FORMER MEMBER'S, OR RETIRANT'S EMPLOYMENT WITH THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

Chair JOHANSON, Vice Chair ELI, and Members of the House Labor & Public Employment Committee

Common Cause Hawaii supports HB 2747, which proposes an amendment to Article XVI, section 2 of the Hawaii State Constitution to authorize the legislature to require the forfeiture or reduction of benefits of any member, former member, or retirant of the employees' retirement system who is convicted of a felony related to the member's, former member's, or retirant's employment with the State or any political subdivision thereof.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy. Common Cause Hawaii works to restore faith in our government and our democracy that has been shattered in the last few years through ethics, accountability, and transparency reforms. These reforms are probably the most important tools to restoring the people's trust in their elected leaders and their government – to show people that their government is acting for the people's interest versus serving their own interests.

HB 2747 will demonstrate to the people that power will be held accountable. We cannot forget that public employees are public servants. Public employees cannot defraud the public and destroy our confidence in government and still reap the benefits of their criminal misconduct. If this were to occur, then the only losers are the people and democracy.

Thus, while Common Cause Hawaii supports HB 2747, it is uncertain that a constitutional amendment would be required to effectuate the intent of HB 2747. First, Hawaii's pension laws have been amended many times through the years without a constitutional amendment.

Second, if the legislature does not limit or reduce benefits already accrued to the member by permitting the benefits to be provided to the member's designee upon the member's passing, this is permitted under the Hawaii State Constitution.

It should be noted that the...provision would not limit the legislature in effecting a reduction in the benefits of a retirement system provided that reduction did not apply to benefits already accrued. In other words, the legislature could

reduce benefits as to (1) new entrants into a retirement system, or (2) as to persons already in the system in so far as their future services were concerned. It could not, however, reduce the benefits attributable to past services. Further, the section would not limit the legislature in making general changes in the system, applicable to past members, so long as the changes did not necessarily reduce the benefits attributable to past services.

Hawaii Constitutional Convention Studies (1978); Article XIV: General and Miscellaneous Provisions, Yvonne Y. Izu, at pg. 55, LRB publisher (internal citations omitted).

Third, upon becoming a member of the retirement system, the employee enters into a contractual agreement, the terms of which are set forth in Hawaii laws. Breaches of the contract, such as a felony conviction, may operate to void any agreement and permit legislative action without constitutional amendment.

Thank you for the opportunity to testify in support of HB 2747 with comments, and Common Cause Hawaii respectfully urges the Committee members to support the passage of HB 2747 out of your Committee. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



HB-2747

Submitted on: 2/2/2020 9:34:20 PM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Support	No

Comments:

These miscreants are feeding at the public trough and they should be stopped. It is not pono.

HB-2747

Submitted on: 2/2/2020 9:34:20 PM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Support	No

Comments:

These miscreants are feeding at the public trough and they should be stopped. It is not pono.

HB-2747

Submitted on: 2/2/2020 11:08:43 PM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair Johanson and Members of the Committee on Labor and Public Employment,

I am writing to support HB 2747 with comments.

First, Hawaii's pension laws have been amended many times through the years without a constitutional amendment.

Second, if the legislature does not limit or reduce benefits already accrued to the member by permitting the benefits to be provided to the member's designee upon the member's passing, this is permitted under the Hawaii State Constitution.

It should be noted that the...provision would not limit the legislature in effecting a reduction in the benefits of a retirement system provided that reduction did not apply to benefits already accrued. In other words, the legislature could reduce benefits as to (1) new entrants into a retirement system, or (2) as to persons already in the system in so far as their future services were concerned. It could not, however, reduce the benefits attributable to past services. Further, the section would not limit the legislature in making general changes in the system, applicable to past members, so long as the changes did not necessarily reduce the benefits attributable to past services.

Hawaii Constitutional Convention Studies (1978); Article XIV: General and Miscellaneous Provisions, Yvonne Y. Izu, at pg. 55, LRB publisher (internal citations omitted).

Mahalo,

Caroline Kunitake

HB-2747

Submitted on: 2/3/2020 12:44:34 AM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward B Hanel Jr	Individual	Support	No

Comments:

Concur with Common Cause Hawaii support for HB 2747.

If enacted, this bill would amend Article XVI, section 2 of the Hawaii State Constitution to authorize the legislature to require the forfeiture or reduction of benefits of any member, former member, or retirant of the employees' retirement system who is convicted of a felony related to the member's, former member's, or retirant's employment with the State or any political subdivision thereof.

I also recommend that the committee considering revising complete forfeiture of retirement system benefits to a forfeiture of benefits for the period of employment that involved criminal activity. This approach would help blunt legal challenges contending that complete forfeiture is an excessive fine under the 8th Amendment to the US Constitution. Such an approach better matches the penalty to the crime

HB-2747

Submitted on: 2/3/2020 3:36:08 AM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Azuma Chrupalyk	Individual	Support	No

Comments:

LATE

HB-2747

Submitted on: 2/4/2020 1:29:49 AM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
tlaloc tokuda	Individual	Support	No

Comments:

I support the bill